

Mountain Advocate.

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MOTTO.—LIVE FOR OUR FRIENDS—DO THE GREATEST AMOUNT OF GOOD WE CAN TO THE LARGEST NUMBER OF PEOPLE.

Terms: \$1. Per Year In Advance.

BARBOURVILLE, KENTUCKY, FRIDAY, JANUARY 6, 1905.

First Year. Vol. 1. No. 47.

POWERS' DECISION

As it Appears to a Tennessee Lawyer.

We clip the following from the Knoxville Sentinel, written by Leonidas C. Honk, an able Knoxville lawyer and a member of the distinguished Ed Holm family of Tennessee, which we republish in full:

CALEN POWERS' CASE.

Editor the Sentinel: The action of the Kentucky Court of Appeals in granting Caleb Powers, under sentence of death for the alleged murder of William Goebel, a new trial will forever redound to the honor and glory of the proud old Commonwealth. It sheds luster and renown upon Justices Barker and Settle, Democrats, and Burnam and O'Rear, Republicans, the majority of the court concurring in the opinion; and I have not words of condemnation for Justices Paynter, Hobson and Nun, all Democrats, who dissented from the legal grounds upon which the opinion of the court was based.

The case was reversed solely and wholly upon legal grounds, errors of law and practice both, the merits and facts of the case not being discussed; this being the rule in all Appellate Courts that where there are substantial errors of law and practice, cases are reversed upon those grounds and the facts are not discussed, unless it is manifest that upon the facts as presented there is no case made out. But when a case is reversed upon law points and a new trial is to be had, upon the subsequent trial a very different case may be presented and proved.

It may be stated that this case has been reversed three times. Twice Powers was convicted of being an accessory before the fact to the assassination of Goebel, who was contesting Taylor's election as Governor before the Kentucky Legislature, and sentenced to life imprisonment. Both of these convictions were reversed by the Court of Appeals when that court was composed of a majority of Republicans. The third trial resulted in Powers' conviction and the imposition of the death penalty. This was in August, 1903. He again appealed, but this time to a Democratic court which in the meantime had changed its complexion, and there are now five Democrats and two Republicans composing it.

Jim Howard was also convicted twice of being the man who fired the fatal shot and sentenced to life imprisonment, but an appeal to the court, while it had a majority of Republicans on it, both convictions were reversed. The third time he was convicted and again sentenced for life, and upon appeal to the present court last summer his case was affirmed. Many thought this presaged the affirmance by this court of the Powers case, but thanks to an honest court and an uncorrupted judiciary, their fears were unfounded. The names of the Judges, Democrat and Republican alike, who rendered this opinion will live, and deservedly so, as long as the law books of Kentucky are preserved and courts are in existence.

A singular coincidence has occurred in the event Powers is again tried and convicted. Judge Cantrell, who first tried Powers at Frankfort, has just been elected to the Appellate Court, and should Powers' case come before that court again, Cantrell could not sit upon the case, as he has already expressed the opinion overruling his motion for a new trial on his first conviction.

The majority opinion handed down by Justice Barker, and concurred in by Justices Settle, Burnam and O'Rear, is based mainly upon three grounds: first, because the trial

court erred in refusing to give the defendant time in which to discover and file additional grounds for a new trial; second, because the court pronounced sentence of death on the same day verdict returned in open court; and third, because T. C. Campbell, who assisted in the prosecution, stated as follows in his address to the jury: "Howard was not hung, but eleven of the twelve jurors who tried him were in favor of hanging him and one was for life imprisonment, and the eleven had to come to one."

Taking these reasons up in their reversal order, they are each and all sound and tenable and fully warranted the Appellate Court in reversing the case. First, Campbell's reference to the Howard case was highly objectionable, not germane, and had no relevance to or connection with the Powers case. There marks were objected to at the time, and Powers' counsel asked the court to withdraw them from the jury and thus he declined to do. There was not, and could not have been legally, any evidence in the case warming the obnoxious statement; it was a gratuitous declaration, without lawful foundation, in substance and effect conveying incriminating evidence to the jury.

Too many lawyers try to make up in their arguments testimony which they have failed to prove by any witness in the case, and this will not be tolerated in Kentucky any more than it will be in Tennessee, and scores of criminal, and even civil cases, have been reversed here and elsewhere because of improper remarks by counsel. Nobody knows what the effect of an improper and unfounded statement of the character indulged in by Campbell will have upon a jury; and where it is at stake, it will not be tolerated.

On the second ground of reversal: The criminal code of Kentucky says: "Upon verdicts of conviction in cases of felony, the court shall not pronounce judgment until two days after the judgment is rendered, unless the court be about to adjourn for the term." Commending upon this reason for reversing the case I can do no better than quote the court itself: "Unless we are to hold that section 283 was enacted for no useful purpose, it contains a most solemn and vital right of the accused; its meaning is upon the surface; it requires no reflection to understand it; it was enacted for the express purpose of giving the accused time in which to show cause against the sentence about to be passed upon him. This trial was had during a special term of the court, and it cannot be said that within the meaning of the code the term was about to end, because, having been called for the purpose of this trial alone, it of necessity would not end until that was completed. The jury was through with their labors, and were finally discharged, and there were no other juries to be kept waiting by the delay asked for the accused. The right of a defendant to the two days elapsing after his conviction, and before the infliction of the judgment is fully recognized."

Powers claimed to have discovered new evidence, but was not then in a position to properly present it to the court. The court properly denied this delay and right and immediately sentenced him. This was clearly reversible error.

The reasons assigned in the second ground practically cover the first ground upon which the case was reversed, to-wit: "On the same day upon which the verdict was rendered the applicant was required, over his protest, to file his motion and grounds for a new trial; they were required to be immediately argued by counsel, and were at once overruled by the court. At the time of filing his grounds and motions, the appellant asked for additional time

in which to file further grounds. This request was based upon the facts that his counsel had just finished a long and tedious trial, during which the sittings of the court had been held both day and night; that they were wearied by their prolonged labors, and that a few days' time would enable them to produce additional grounds which they did not then possess, in support of his motion." This reasonable request being denied him, was in itself reversible error.

The dissenting opinion of Justices Paynter, Hobson and Nun sounds more like a specious, partisan argument than the utterance of grave, dignified justices of a supreme court. They take the position that Campbell's argument did not affect the material and substantial right of Powers and for that reason the case should not be reversed. How they can know that the argument had no effect I fail to see. It is not the actual effect the illegal argument has, but the probable or possible effect it may have. The substantial rights of the accused must not be jeopardized.

They further say that section 283 of the code does not apply in the case as the court had no other business and was about to adjourn. The fact is that special term of court is only "about to adjourn" when the specific business for which it was called is entirely completed, and was not true in this case, as the accused was entitled to reasonable time in which to formulate and present his grounds for new trial. This, in my opinion, was not given him.

These justices also held that the Appellate Court "has no jurisdiction to review the action of the trial court for errors occurring in the con-

sideration of motions for new trials." This request was based upon the facts that his counsel had just finished a long and tedious trial, during which the sittings of the court had been held both day and night; that they were wearied by their prolonged labors, and that a few days' time would enable them to produce additional grounds which they did not then possess, in support of his motion." This reasonable request being denied him, was in itself reversible error.

(Continued on 4th page.)

THE OPENING

Of the Two Colleges on Last Monday Adds New Life to the Town.

Last Monday morning marked the opening again of both of the Colleges of our town.

Union College had closed the first term of the year before the holidays and on Monday again resumed her work with Prof. B. C. Lewis in charge of the Normal Department. This school has a brighter prospect before it than ever before.

At the same time the Barbourville Institute was opened according to previous announcement, with a strong corps of teachers present and a large enrollment considering the fact that this school has been standing idle until now.

At the same time the Barbourville Institute was opened according to previous announcement, with a strong corps of teachers present and a large enrollment considering the fact that this school has been standing idle until now.

Prof. R. E. Warren the newly

elected President of this Institute is very enthusiastic in this

his new field of labor and the

friends and patrons of the school

will have cause to be thankful

that the Board of Education has

been enabled to secure the services of such an able and compe-

tent man to take charge of this work.

Besides the interesting talks from Profs. Warren and Pope, the assembly was permitted to hear interesting talks from Judge J. H. Davis, Judge J. M. Gilbert, Rev. J. V. Daws, Mr. John A. Black, and Mr. John M. Tinsley, after which the enrollment of pupils was begun.

There were about 130 pupils enrolled at the Institute and about 200 at Union College, making in all about 330 students in the two schools on the opening day.

This field is abundantly large to support two good Colleges and we feel that one is a support and a stimulant to the other, and while we feel a deep interest in Union College, we also feel an interest in the Institute, and it is our fondest hope to see both of these institutions built up and made strong.

There is nothing that speaks better for our town than these two schools in active operation, training the young minds in the knowledge of education.

Knox county alone has sufficient children who should to-day be in school, to more than fill both of these schools and yet not enrolling one fourth of the list.

We hope to see a feeling of

good will exist between the two

institutions, and both strive to

give to the pupils instructed to

them the best possible advan-

tage of an education, and may

the time speedily come when they

will both be equipped with large

convenient boarding halls where

they can accommodate those who

wish to attend, and can furnish

board in connection with tuition at reasonable prices.

We wish for both of the schools of our town unlimited and unbounded success.

CURFEW

Shall Ring To-Night, by Order of City Council.

AN ORDINANCE.

Be it ordained by the Board of Council of the City of Barbourville, that any infant under the age of eighteen (18) years and over the age of seven (7) years, who shall be on the streets, public square, alleys and commons of said city between the hours of 8 o'clock p.m. and 4 o'clock a.m., except such infant be on business and acting under the direction of his father, mother or guardian, or unless such infant shall have a reasonable and proper excuse therefore, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than one dollar and not more than five dollars and the cost of the prosecution for each offence.

It shall be, and is hereby made, the duty of the Marshal of the City of Barbourville, to ring the Curfew Bell at the hour of 7:45 o'clock p.m., every evening, and to arrest all persons under the age of 18 years and over 7 years, who shall be found on the streets, alleys, public square or commons of the said city at or after the hour of 8 o'clock p.m.

This ordinance shall take effect from its publication.

H. C. COLE,
Attest:
THOS. D. TINSLEY, Clerk.

BARBOURVILLE INSTITUTE,

FIVE DEPARTMENTS

Will Open the First Monday in January, 1905.

Please Read what we can do for you and we will work on a guarantee that YOU GET WHAT YOU PAY FOR if you do your part.

Collegiate Department,

Prof. R. E. Warren, Principal, late of Georgetown High School, and an honor graduate in the Classical Department of Kentucky State College.

Normal Department,

Prof. R. L. Pope, Principal, graduate of Kentucky State College and afterwards a student in the University of Virginia. Sixteen years experience in Normal Teaching, Institute work, and six years Professor of Latin and Mathematics in Williamsburg Institute Business Department.

BUSINESS DEPARTMENT,

Prof. Henry L. Pitman, Instructor, late of Minneapolis Business College will have charge again of this Department.

Intermediate Department,

Prof. W. E. Faulkner, Assistant Principal of the Barbourville Graded School will be Instructor of this Department.

Primary Department,

This Department will be under the skillful management of Mrs. J. V. Daws, which fact alone insures success in this Department.

Make it a point to enroll the First Day and you will be enabled to get recitations in any of the following classes:—Any class in regular Primary or Intermediate grades, any class in the Common School course, any class leading up to State Certificate or State Diploma, any class required in the A. B. or B. S. Course, and for the benefit of those who may be irregular or who wish special work, there will be classes in Typewriting, Book-keeping, Shorthand, Commercial Arithmetic, Latin, Greek, German, French, Spanish, General History, Literature, Trigonometry, Geometry, Surveying, Chemistry and Botany.

We cordially invite our patrons and friends to be present on the morning of the opening, January 2, 1905, and request that they continue to visit our class-rooms during the Winter and Spring terms so that they may see the nature of the work.

Board can be furnished to all applicants at the rate of \$2.00 per week. Tuition from \$1.00 to \$2.50 per month, according to grade. Normal Department \$2.00 per month.

Any information will be promptly given by addressing or calling on

R. L. POPE, A. B., Sec'y of the Faculty,
BARBOURVILLE, KY.

CORRESPONDENCE.

NOTICE TO CORRESPONDENTS.

All correspondents who write for this paper are requested to report the news briefly and confine themselves to news. Puffs for merchants come under the head of paid posts, and would be inserted at the rate of 5 cents per line, otherwise we must pencil them.

Be careful not to write anything that will prove offensive to any one; a good joke is appreciated by all, but we want to make friends and not enemies of all with whom we come in contact.

Write on only one side of your paper and be sure to sign your name to the manuscript—not for publication but for future reference and to show good faith—a failure to do this will hereafter necessarily cause your letter to be made public.

Please read these notes and bear them in mind, and write on one side of the paper only.

Respectfully,
THE EDITOR.

Hopper.

We are experiencing a real cold blizzard—snow and sleet.

The wind has been blowing at a terrible rate for thirty-six hours.

Subscribe for the Mountain Advocate if you want to hear the news.

The school teachers all seem to be in good spirits since they received their 33¢ cent draw.

SWEET VIOLET.

Ola, Ky.

G. W. Jenkins, candidate for jailer, is leading the race by far. He is out among the boys every day, and is meeting with success on every turn. Boys, we could do no better than to have Jenkins for our next jailer.

The writer had a very pleasant time visiting among friends at this place last week. I spent Christmas night at Mr. Polly's, Saturday night at Mr. Fugate's and Miss Ritter's, and myself spent Sunday on Bottom Fork.

From every little humble home one can hear the name of Ferguson, Blair, Yantz and Craft resounding, which signifies that these four men are winners in the coming primary. The latter is a young man that certainly deserves the support of one and all. He is a poor boy that has made his own way in life, and we believe he will win the race.

The Interstate railroad is to be extended from Appalachia, Va., via Kelly View to Norton, Va., twelve miles, penetrating a section rich in coal and minerals. Work will be commenced at once.

J. M. Yantz, our leading candidate for Superintendent, has made a thorough canvass of this precinct, and we are pleased to say that the great mass of respected citizens are doing their utmost to give him a clean sweep here. We only know of two who will lose in this precinct.

We are experiencing a real blizzard, snow and sleet. The wind was blowing at a terrible rate for twenty-four hours.

Many candidates are defeated and a few have been successful, and we trust those nominated are all good men and well qualified to fill the offices to which they aspire. Men who stand for the right, men who are true and upright will not waver.

The boys of Ola say they would like to correspond with some of the Advocate readers.

Our "hello girl," Miss Mary Craft, of Whitesburg, was unit in the holy bonds of matrimony last Saturday evening to Mr. Lafayette Banks, of Whitesburg, the Rev. Craft officiating. The wedding was very quiet, and took place in the parlor of the bride's home, and only a few of their immediate friends were present. We join the Advocate in wishing the happy couple a long and prosperous life. We hope to retain Mrs. Banks as "hello girl," at least for a while, in the exchange, as she for so long been so courteous and prompt at her post of duty. The

patrons would miss her valuable services. May the good things of this glorious universe be at their disposal through life.

—DEURIS.

State News.

Owen McEntyre will launch an afternoon daily in Frankfort.

The jury in the Milligan poisoning case at Lexington disagreed and a new jury will hear the testimony.

Clarence Hathaway, colored, was hanged at Winchester last Tuesday morning for the murder of his sweetheart, one year ago.

Witnesses from Frankfort that the Governor will call an extra session of the Legislature to meet about January 16 to consider a new site for the capitol building.

News comes from Frankfort that the Governor will call an extra session of the Legislature to meet about January 16 to consider a new site for the capitol building.

It is denied that the meeting of the Capitol Commission was held at Frankfort Wednesday to consider Capitol Commission matters, but referred only to matters in the board of Sinking Fund Commission.

Fire at Bardstown Tuesday night destroyed the plant of the Record newspaper, and also a large tenement house, entailing a loss of about \$10,000. The fire originated shortly after midnight by the explosion of a can of gasoline.

New Business Firm.

Max Reims, of Crab Orchard, has rented the storeroom of C. S. Sampson, recently vacated by Thos. Gibson, and will open a new clothing store at an early date. He expects to be ready to begin business by the first of February.

The Democratic party is a thing of the past. Socialism is a great world wide movement. There are eight million Socialists in the world. The Socialists increased in the United States from \$7,000 in 1900 to a half million in 1904.

To advance the cause of Socialism, I will pay your subscription to a Socialist weekly paper for three months if you will send me your name and postoffice address.

ALEX T. WILSON.
Barbourville, Ky.

POPE—MOORE.

At Pineville, Monday night, Mr. Fielding Moore and Miss Nannie Pope, of this place, were united in marriage, the Rev. C. K. Dickey, of the Methodist church, performing the ceremony. The wedding was a quiet affair, and was known only to a few intimate friends, coming in the nature of a surprise to their many friends.

Mr. Moore is a popular merchant of this place, while Mrs. Moore was one of the county's most popular school teachers.

They have taken up their residence in the Jim Miller property, on Main street.

Commissioner's Sale.

KNOX CIRCUIT COURT.
Daniel Hocker & Co.,
vs. Carl Cooper, Judgment.

Under judgment of the Knox Circuit Court in the action of Daniel Hocker & Co., against Carl Cooper, I will on Saturday, the 14, day of January, 1905, at about the hour of one o'clock p.m., sell at the door of the Court House in Barbourville, Ky. on a credit of three months, about 22,000 feet of Oak lumber on the rail road at the Barbourville depot, and about 19,000 feet of Oak lumber on the mill yard on Bull creek, in Knox county, or a sufficiency of same will be sold to raise the sum of \$296.30 and the cost of this action to \$— the purchaser will give bond with approved security bearing interest from date of sale and having the force and effect of a judgment.

This December 30, 1904.

W. F. WESTERFIELD;
Com. K. C. C.

POWERS' DECISION.

(Continued from First Page.)

Perhaps the most interesting, if not as important as the reversal of the case, matter connected with the whole case, is the opinion handed down by Justice Barker, Democrat, that there is a Federal question in this case, to-wit: "That under the Federal constitution the accused had not had the equal protection of the laws." This was in connection with the summoning of the jurymen, wherein Powers made affidavit that the sheriff had purposely passed by competent Republicans and summoned only "Goebel Democrats" for jury service, basing this objection to the panel on the fourteenth amendment of the constitution of the United States, to-wit: "Nor (shall any State) deny to any person within its jurisdiction the equal protection of the laws."

Judge Barker says: "In conclusion I am of opinion that the trial judge should have passed upon the question of fact presented by the appellant as to the summoning of the jurors, and if there was even a well grounded suspicion that unfairness had prevailed the jury should have been discharged and others summoned under such safeguards as would preclude indulgence in partisan methods."

This seems to me conclusive and sufficient, and nothing can be added thereto.

God bless old Kentucky and her judiciary. All honor and credit to them. Justice prevails there, in the end, as elsewhere, and the foundations of her "temples of justice" are secure.

A Guaranteed Cure for Pilies.

Itching, Blind, Bleeding or Pruriting Pilies. Druggists refund money if PAXO OINTMENT fails to cure any case, no matter of how longstanding. In 6 to 14 days. First application gives ease and rest, 50 cents. If druggist hasn't it send 50 cents in stamps and it will be forwarded postpaid by Paris Medeline Co., St. Louis, Mo.

Council Meeting.

Last Monday night was the regular monthly meeting of the City Council, and in the absence of the City Clerk, W. W. Tinsley, acted as clerk of the meeting.

The regular routine of business was taken up in its order and acted upon.

The franchise sale for a water works system was not taken up, as the City Clerk was absent, and no one present to report the sale, the matter went over until the next meeting.

A Carew Ordinance was introduced and passed and ordered published, and the same will be found elsewhere in this issue.

The Town Marshal was instructed to proceed at once to collect all taxes due the city and to levy and sell in order to secure the taxes.

WANTED.

MEN and WOMEN in this county and adjoining territories, to represent and advertise an old established house of solid financial standing. Salary to men \$21 weekly, to women \$12 to \$18 weekly with expenses advanced each Monday by check, direct from headquarters, Horse and buggy furnished when necessary; position permanent. Address Blew Bros. & Co., Dept. 4, Monon Bluff, Chicago, Ill.

LISTEN!

I am preparing to make an invoice of my immense stock of goods, and in order to reduce the labor, I will sell all my remnants now in stock at and below cost.

Cash is much easier to invoice than piece goods remnants, etc., in all the different lines in general merchandise, therefore, I offer to give you the advantage of this GREAT SLAUGHTER PRICE SALE for the next few days.

Call early and get choice before the goods are picked over.

L. H. JARVIS.

WANTED—Quickly, few persons to represent and advertise an old established house of solid financial and mercantile means. Small territory of few counties. Salary and expenses paid weekly. Expense money advanced. Commercial and other persons can be considered. Previous experience not essential. Enclose self addressed envelope. Address, REVERENT THOMAS ELLIERS, 225 Dearborn St., Chicago.

Professional Cards.

J. M. ROBISON,

LAWYER.

OFFICE in Caudill Building, next door to Hotel Knox.
BARBOURVILLE, KY.

M. G. HIGNITE,

LAWYER.

Supt. of Public Schools. Office in Court-house.
BARBOURVILLE, KY.

S. B. DISHMAN,

LAWYER.

BARBOURVILLE, KY.

THOS. D. TINSLEY,

ATTORNEY-AT-LAW,

Office on Public Square. Notary in Office. PHONES 101.

FLEM D. SAMPSON,

LAWYER.

BARBOURVILLE, KY.

Careful attention given to all business entrusted to our care.

J. D. TUGGLE,

LAWYER.

BARBOURVILLE, KENTUCKY.

A. L. PARKER,

DENTIST.



Office over First National Bank.
PHONE 340. BARBOURVILLE, KY.
Consultation Free.

J. R. SMYTH.

DENTIST.



OFFICE
Over Post Office. Telephones.
Office 33, Res. 81.

For a nice, clean Shave
or neat Hair cut

Call on—

John Carmichael,

In the HOTEL KNOX.

Clean Towels and
Sharp Instruments.

Polite and Courteous to all

Tonsorial Parlor.

Walnut Street between Knox and High
New Furniture, Clean Towels
and Sharp Instruments.

Work done in an Artistic
Manner.

If you want satisfaction,

Call on WILL HENDERSON,
Proprietor.

Handles just that line.

Call upon him and get what you want.

Parker & Parker

Successors to

Parker Brothers

Have a Full Stock of SHOES for Ladies, Gents
and Children.

Also Stapl Groceries and Notions
FURNISHING GOODS & C
PRICES as LOW as the LOWEST

For STRICTLY CASH TO ALL.

Best Prices Paid for Produce.

10 cts. a copy \$1.00 a year

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is "the cleanest, most stimulating, meatiest general magazine for the family," says one of the million who read it every month.

It is without question **"The best at any Price!"**

Great features are promised for next year—six or more wholesome interesting short stories in every number, continued stories, beautiful pictures in colors, and articles by such famous writers as Ida M. Tarbell, Lincoln Steffens, Ray Stannard Baker, John La Farge, William Allen White and Charles Wagner. Get all of it right into your home by taking advantage of this **Special Offer.**

Send \$1.00 before January 31, 1905, for a subscription for the year 1905 and we will send you free the November and December numbers of 1904—fourteen months for \$1.60 or the price of twelve.

Address MCCLURE'S, 48-50 East 23rd Street, New York, N. Y.

Write for Agents' terms and mention this paper.

A BUSINESS EDUCATION

is absolutely necessary to every one who wants to succeed in business. Those who win success in business are those who have had the best business education.

It is of first importance to get your training at the school that stands in the very front rank.

THE BRYANT & STRATTON BUSINESS COLLEGE, N. E. Cor. Second and Walnut Sts., LOUISVILLE, KY.

Seven experienced teachers, each one a specialist in his line.

Write for a beautiful book giving terms, fees, and a complete description of the school and the conditions under which it is conducted.

School open all year, students enter at any time.

E. J. WRIGHT, Pres.

Yours is the only school in the country that gives a complete business education.

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